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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1943

No. 73



NICK FALBO, *Petitioner*

v.

UNITED STATES OF AMERICA



ON WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT

A P P E N D I X
FOR PETITIONER'S BRIEF

HAYDEN C. COVINGTON

VICTOR F. SCHMIDT

Attorneys for Petitioner

HAYDEN C. COVINGTON, *of Counsel*

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APPENDIX

THE SELECTIVE TRAINING AND SERVICE ACT OF 1940, AS AMENDED

Sec. 2. Registration in general.

Except as otherwise provided in this Act, it shall be the duty of every male citizen of the United States, and of every other male person residing in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and sixty-five, to present himself for and submit to registration at such time or times and place or places, and in such manner and in such age group or groups, as shall be determined by rules and regulations prescribed hereunder.

Sec. 3. Training and service in general.

(a) Except as otherwise provided in this Act, every male citizen of the United States, and every other male person residing in the United States, who is between the ages of eighteen and forty-five at the time fixed for his registration, shall be liable for training and service in the land or naval forces of the United States: *Provided*, That any citizen or subject of a neutral country shall be relieved from liability for training and service under this Act if, prior to his induction into the land or naval forces, he has made application to be relieved from such liability in the manner prescribed by and in accordance with rules and regulations prescribed by the President, but any person who makes such application shall thereafter be debarred from becoming a citizen of the United States: *Provided further*, That no citizen or subject of any country who has been or who may hereafter be proclaimed by the President to be an alien enemy of the United States shall be inducted for training and service under this Act unless he is acceptable to the land or naval

forces. The President is authorized from time to time, whether or not a state of war exists, to select and induct into the land and naval forces of the United States for training and service, in the manner provided in this Act, such number of men as in his judgment is required for such forces in the national interest: *Provided*, That within the limits of the quota determined under section 4 (b) for the subdivision in which he resides, any person, regardless of race or color, between the ages of eighteen and forty-five, shall be afforded an opportunity to volunteer for induction into the land or naval forces of the United States for the training and service prescribed in subsection (b), but no person who so volunteers shall be inducted for such training and service so long as he is deferred after classification: *Provided further*, That no man shall be inducted for training and service under this Act unless and until he is acceptable to the land or naval forces for such training and service and his physical and mental fitness for such training and service has been satisfactorily determined: *Provided further*, That no men shall be inducted for such training and service until adequate provision shall have been made for such shelter, sanitary facilities, water supplies, heating and lighting arrangements, medical care, and hospital accommodations, for such men, as may be determined by the Secretary of War or the Secretary of the Navy, as the case may be, to be essential to public and personal health: *Provided further*, That except in time of war there shall not be in active training or service in the land forces of the United States at any one time under subsection (b) more than nine hundred thousand men inducted under the provisions of this Act. The men inducted into the land or naval forces for training and service under this Act shall be assigned to camps or units of such forces: *Provided further*, That no man, without his consent, shall be inducted for training and service under this Act after he has attained the forty-fifth anniversary of the day of his birth.

Sec. 5. Persons not required to register; Deferment, exemption, and relief from training and service.

(b) In time of peace, the following persons shall be relieved from liability for training and service under section 3 (b) and from the liability to serve in any reserve component of the land or naval forces imposed by this Act:

[(b)] (2) Any person who as a member of the active National Guard shall have satisfactorily served as an officer or enlisted man for at least one year in active Federal service in the Army of the United States, and subsequent thereto for at least two consecutive years in the Regular Army or in the active National Guard, before or after or partially before and partially after the time fixed for registration under section 2; or any person who as a member of the Naval Reserve or Marine Corps Reserve shall have satisfactorily served for at least three consecutive years on active duty before or after or partially before and partially after the time fixed for such registration; or any person who as a member of the Naval Reserve or Marine Corps Reserve shall have satisfactorily served for at least one year on active duty and for at least two consecutive years in the Regular Navy or Marine Corps or with an organized unit of the Naval Reserve or Marine Corps Reserve, before or after or partially before and partially after the time fixed for such registration.

[(b)] (3) Any person who as an officer or enlisted man in the active National Guard at the time fixed for registration under section 2, and who shall have satisfactorily served therein for at least six consecutive years, before or after or partially before and partially after the time fixed for such registration.

[(b)] (4) Any person who is an officer in the Officers' Reserve Corps on the eligible list at the time fixed for registration under section 2, and who shall have satisfactorily

served therein on the eligible list for at least six consecutive years, before or after or partially before and partially after the time fixed for such registration.

. . .

[5.] (c) (1) The Vice President of the United States, the Governors, and all other State officials chosen by the voters of the entire State, of the several States and Territories, members of the legislative bodies of the United States and of the several States and Territories, judges of the courts of record of the United States and of the several States and Territories and the District of Columbia, shall, while holding such offices, be deferred from training and service under this Act in the land and naval forces of the United States.

(2) The President is authorized, under such rules and regulations as he may prescribe, to provide for the deferment from training and service under this Act in the land and naval forces of the United States, of any person holding an office (other than an office described in paragraph (1) of this subsection) under the United States or any State, Territory, or the District of Columbia, whose continued service in such office is found in accordance with section 10 (a) (2) to be necessary to the maintenance of the public health, safety, or interest.

(d) Regular or duly ordained ministers of religion, and students who are preparing for the ministry in theological or divinity schools recognized as such for more than one year prior to the date of enactment of this Act, shall be exempt from training and service (but not from registration) under this Act.

(e) (1) The President is authorized, under such rules and regulations as he may prescribe, to provide for the deferment from training and service under this Act in the land and naval forces of the United States of any or all categories of those men whose employment in industry,

agriculture, or other occupations or employment, or whose activity in other endeavors, is found in accordance with section 10 (a) (2) to be necessary to the maintenance of the national health, safety, or interest. The President is also authorized, under such rules and regulations as he may prescribe, to provide for the deferment from training and service under this Act in the land and naval forces of the United States (1) of any or all categories of those men in a status with respect to persons dependent upon them for support which renders their deferment advisable; and (2) of any or all categories of those men found to be physically, mentally, or morally deficient or defective. For the purpose of determining whether or not the deferment of men is advisable because of their status with respect to persons dependent upon them for support, any payments of allowances which are payable by the United States to the dependents of persons serving in the land or naval forces of the United States shall be taken into consideration but the fact that such payments of allowances are payable shall not be deemed conclusively to remove the grounds for deferment when the dependency is based upon financial considerations and shall not be deemed to remove the grounds for deferment when the dependency is based upon other than financial considerations and cannot be eliminated by financial assistance to the dependents. The President is also authorized, under such rules and regulations as he may prescribe, to provide for the deferment from training and service under this Act in the land and naval forces of the United States of any or all categories of those men who have wives or children, or wives and children, with whom they maintain a bona fide family relationship in their homes. No deferment from such training and service shall be made in the case of any individual except upon the basis of the status of such individual, and no such deferment shall be made of individuals by occupational groups or of groups of individuals in any plant or institution. Rules and regulations issued pursuant to this subsection shall include pro-

visions requiring that there be posted in a conspicuous place at the office of each local board a list setting forth the names and classifications of those men who have been classified by such local board.

(2) Anything in this Act to the contrary notwithstanding, the President is authorized, under such rules and regulations as he may prescribe, to provide for the deferment, by age group or groups, from training and service under this Act in the land and naval forces of the United States, of those men whose age or ages are such that he finds their deferment to be advisable in the national interest: *Provided*, That the President may, upon finding that it is in the national interest, terminate the deferment by age group or groups of any or all of the men so deferred.

(f) Any person eighteen or nineteen years of age who, while pursuing a course of instruction at a high school or similar institution of learning, is ordered to report for induction under this Act during the last half of the academic year at such school or institution, shall, upon his request, have his induction under this Act postponed until the end of such academic year.

(g) Nothing contained in this Act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Any such person claiming such exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the land or naval forces under this Act, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induc-

tion, be assigned to work of national importance under civilian direction. Any such person claiming such exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board provided for in section 10 (a) (2). Upon the filing of such appeal with the appeal board, the appeal board shall forthwith refer the matter to the Department of Justice for inquiry and hearing by the Department or the proper agency thereof. After appropriate inquiry by such agency, a hearing shall be held by the Department of Justice with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board (1) that if the objector is inducted into the land or naval forces under this Act, he shall be assigned to noncombatant service as defined by the President, or (2) that if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be assigned to work of national importance under civilian direction. If after such hearing the Department finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall give consideration to but shall not be bound to follow the recommendation of the Department of Justice together with the record on appeal from the local board in making its decision. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors.

(h) No exception from registration, or exemption or deferment from training and service, under this Act, shall continue after the cause therefor ceases to exist.

. . .

Sec. 10. Rules and regulations; Selective Service System.

(a) The President is authorized—

(1) to prescribe the necessary rules and regulations to carry out the provisions of this Act;

(2) to create and establish a Selective Service System, and shall provide for the classification of registrants and of persons who volunteer for induction under this Act on the basis of availability for training and service, and shall establish within the Selective Service System civilian local boards and such other civilian agencies, including appeal boards and agencies of appeal, as may be necessary to carry out the provisions of this Act. There shall be created one or more local boards in each county or political subdivision corresponding thereto of each State, Territory, and the District of Columbia. Each local board shall consist of three or more members to be appointed by the President, from recommendations made by the respective Governors or comparable executive officials. No member of any such local board shall be a member of the land or naval forces of the United States, but each member of any such local board shall be a civilian who is a citizen of the United States residing in the county or political subdivision corresponding thereto in which such local board has jurisdiction under rules and regulations prescribed by the President. Such local boards, under rules and regulations prescribed by the President, shall have power within their respective jurisdictions to hear and determine, subject to the right of appeal to the appeal boards herein authorized, all questions or claims with respect to inclusion for, or exemption or deferment from, training and service under this Act of all individuals within the jurisdiction of such local boards. The decisions of such local boards shall be final except where an appeal is authorized in accordance with such rules and regulations as the President may prescribe. Appeal boards and agencies of appeal within the Selective Service System shall be composed of civilians who are citizens of the United States. No person who is an officer, member, agent, or em-

employee of the Selective Service System, or of any such local or appeal board or other agency, shall be excepted from registration, or deferred from training and service, as provided for in this Act, by reason of his status as such officer, member, agent, or employee;

(3) to appoint by and with the advice and consent of the Senate, and fix the compensation at a rate not in excess of \$10,000 per annum, of a Director of Selective Service who shall be directly responsible to him and to appoint and fix the compensation of such other officers, agents, and employees as he may deem necessary to carry out the provisions of this Act: *Provided*, That any officer on the active or retired list of the Army, Navy, Marine Corps, or Coast Guard, or of any reserve component thereof or any officer or employee of any department or agency of the United States who may be assigned or detailed to any office or position to carry out the provisions of this Act (except to offices or positions on local boards, appeal boards, or agencies of appeal established or created pursuant to section 10 (a) (2) may serve in and perform the functions of such office or position without loss of or prejudice to his status as such officer in the Army, Navy, Marine Corps, or Coast Guard or reserve component thereof, or as such officer or employee in any department or agency of the United States: *Provided further*, That any person so appointed, assigned, or detailed to a position the compensation in respect of which is at a rate in excess of \$5,000 per annum shall be appointed, assigned or detailed by and with the advice and consent of the Senate: *Provided further*, That the President may appoint necessary clerical and stenographic employees for local boards and fix their compensation without regard to the Classification Act of 1923, as amended, and without regard to the provisions of civil-service laws;

(4) to utilize the services of any or all departments and any and all officers or agents of the United States and to accept the services of all officers and agents of the several States, Territories, and the District of Columbia and sub-

divisions thereof in the execution of this Act; and

(5) to purchase such printing, binding, and blankbook work from public, commercial, or private printing establishments or binderies upon orders placed by the Public Printer or upon waivers issued in accordance with section 12 of the Printing Act approved January 12, 1895, as amended by the Act of July 8, 1935 (49 Stat. 475), and to obtain by purchase, loan, or gift such equipment and supplies for the Selective Service System as he may deem necessary to carry out the provisions of this Act, with or without advertising or formal contract; and

(6) to prescribe eligibility, rules, and regulations governing the parole for service in the land or naval forces, or for any other special service established pursuant to this Act, of any person convicted of a violation of any of the provisions of this Act.

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Sec. 11. Penalties.

Any person charged as herein provided with the duty of carrying out any of the provisions of this Act, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said Act, rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or nonliability of himself or any other person for service under the provisions of this Act, or rules, regulations, or directions made pursuant thereto, or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration

or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act, or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, or conspire to do so, shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than \$10,000, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by any military or naval court martial in any case arising under this Act *unless such person has been actually inducted for the training and service prescribed under this Act or unless he is subject to trial by court martial under laws in force prior to the enactment of this Act. Precedence shall be given by courts to the trial of cases arising under this Act. [Italics added]*

SELECTIVE SERVICE REGULATIONS SECOND EDITION

601.5 *Delinquent.* A "delinquent" is (1) any man required under the selective service law and directions given pursuant thereto to present himself for and submit to registration on a certain day fixed by the President who fails to so present himself for and submit to registration on that day and has no valid reason for having failed to perform that duty; or (2) any registrant who, prior to his induction into the military service, fails to perform, at the required time or within the allowed period of given time, any duty imposed upon him by the selective service law and directions

given pursuant thereto and has no valid reason for having failed to perform that duty.

601.7 *Inducted man.* An "inducted man" is a man who has become a member of the land or naval forces through the operation of the Selective Service System.

601.8 *Induction station.* The term "induction station" refers to any camp, post, ship, or station at which selected men are received by the military authorities and, if found acceptable, are inducted into military service.

NATIONAL ADMINISTRATION

603.1 *Director of Selective Service.* The Director of Selective Service is responsible directly to the President. He is hereby charged with the administration of the selective service law and is hereby authorized and directed:

- (1) To prescribe such amendments to these regulations as he shall deem necessary.
- (2) To issue such public notices, orders, and instructions as shall be necessary to the efficient administration of the selective service law.
- (3) To obligate funds appropriated for the administration of the selective service law.
- (4) To appoint such officers, employees, assistants, and deputies whose salary is \$5,000 per annum or less, as shall be necessary to the efficient administration of the selective service law.
- (5) To perform such other duties as shall be required of him under the selective service law.
- (6) To delegate any of his functions and powers to such officers, agents, or persons as he may designate.

STATE ADMINISTRATION

603.11 *Governor.* The Governor of each State shall have charge of the administration of the selective service law in his State. The office by means of which he performs his selective service functions shall be called "State Headquarters for Selective Service." State Headquarters for Selective Service shall be an office of record for selective service operations only; all selective service records and no other records shall be maintained in this office. For the operation of State Headquarters for Selective Service any necessary expense, including the hire of clerical personnel, shall be paid for by the Federal Government as provided in these regulations.

603.12 *State Director of Selective Service.* The Governor of each State is authorized to recommend for appointment an official to whom he may delegate his administrative functions relating to selective service. This official, if so recommended and appointed, shall be called the "State Director of Selective Service" and shall be in immediate charge of State Headquarters for Selective Service.

BOARDS OF APPEAL

603.21 *Area.* Each State Director of Selective Service shall establish one or more board of appeal areas in his State. Each such area shall include whole local board areas and, unless a larger number is authorized by the Director of Selective Service, should have not more than 70,000 registrants as a result of the first registration.

603.22 *Composition and appointment.* For each board of appeal area, a board of appeal, normally of five members, shall be appointed by the President, upon recommendation of the Governor. The members shall be male citizens of the United States who are not members of the land or naval forces; they shall be residents of the area for which their board is appointed; and they should be at least 38 years old. The board of appeal should be a composite board,

representative of all activities of its district, and as such should include one member from labor, one member from industry, one physician, one lawyer, and, where applicable, one member from agriculture. If the number of appeals sent to one board becomes too great for the board to handle without undue delay, additional groups of five members similarly constituted shall be appointed to the board by the President, upon recommendation of the Governor. Each such group shall have full authority to act for the board on all cases assigned to it by the board. Each group shall act separately. An additional member, who shall supervise and coordinate the work of all the groups of a board of appeal, shall be appointed by the President, upon recommendation of the Governor.

603.24 *Jurisdiction.* Each board of appeal shall have jurisdiction to review and to affirm or change any decision appealed to it from any local board in its area or any decision appealed from any local board not in its area when transferred to it in the manner provided in these regulations.

LOCAL BOARDS

603.51 *Area.* Each State shall be divided into local board areas by the Governor. Each area should have a population of about 30,000. There shall be at least one separate local board area in each county.

603.52 *Composition and appointment.* For each local board area, a local board of three or more members shall be appointed by the President, upon recommendation of the Governor. The members shall be male citizens of the United States who are not members of the land or naval forces; they preferably should be residents of the area for which their board is appointed, and in any event, shall be residents of the county in which their local board has jurisdiction; and they should be at least 38 years old.

603.54 *Jurisdiction.* The jurisdiction of each local board shall extend to all persons registered in, or subject to registration in, the area for which it was appointed and to all persons whose Registration Cards (Form 1) are duly transferred to it. It shall have full authority to do and perform all acts authorized by the selective service law.

IN GENERAL

611.5 *Responsibility for performance of duty. . . .*

(e) The Selective Training and Service Act of 1940, as amended, section 11, provides that "any person charged as herein provided with the duty of carrying out any of the provisions of this Act, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said Act, rules, regulations, or directions who shall knowingly make, or be a party to the making of, any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or nonliability of himself or any other person for service under the provisions of this Act, or rules, regulations, or directions made pursuant thereto, or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act, or any person or persons

who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, or conspire to do so, shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than \$10,000, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by any military or naval court martial in any case arising under this Act unless such person has been actually inducted for training and service prescribed under this Act or unless he is subject to trial by court martial under laws in force prior to the enactment of this Act. Precedence shall be given by courts to the trial of cases arising under this Act."

AVAILABLE FOR OR IN MILITARY SERVICE

622.12 *Class I-A-O: Available for noncombatant military service; conscientious objector.* In Class I-A-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to combatant military service in which he might be ordered to take human life, but not conscientiously opposed to noncombatant military service in which he could contribute to the health, comfort and preservation of others.

622.13 *Class I-B: Formerly available for limited military service.* No registrant shall hereafter be placed in Class I-B, and all registrants now in Class I-B shall be reclassified at the time and in the manner specified by the Director of Selective Service.

622.14 *Class I-B-O: Formerly available for noncombatant limited military service.* No registrant shall hereafter be placed in Class I-B-O, and all registrants now in Class I-B-O shall be reclassified at the time and in the manner specified by the Director of Selective Service.

622.44 *Class IV-D: Minister of religion or divinity student.* (a) In Class IV-D shall be placed any registrant who is a regular or duly ordained minister of religion or who is a student preparing for the ministry in a theological or divinity school which has been recognized as such for more than 1 year prior to the date of enactment of the Selective Training and Service Act (September 16, 1940).

(b) A "regular minister of religion" is a man who customarily preaches and teaches the principles of religion of a recognized church, religious sect, or religious organization of which he is a member, without having been formally ordained as a minister of religion; and who is recognized by such church, sect, or organization as a minister.

(c) A "duly ordained minister of religion" is a man who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect, or religious organization, to teach and preach its doctrines and to administer its rites and ceremonies in public worship; and who customarily performs those duties.

AVAILABLE FOR WORK OF NATIONAL IMPORTANCE UNDER CIVILIAN DIRECTION

622.51 *Class IV-E: Available for work of national importance; conscientious objector.* (a) In Class IV-E shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to both combatant and noncombatant military service.

(b) Upon being advised by the Director of Selective Service that a registrant who was inducted into the land or naval forces for military service will be discharged because of conscientious objections which make him unadaptable to military service, the local board shall change such registrant's classification and place him in Class IV-E. The Director of Selective Service shall assign such registrant to work of national importance under civilian direction.

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DEFERRED BY REASON OF BEING UNFIT

622.61 *Class IV-F: Morally unfit.* In Class IV-F shall be placed every registrant who, under procedure and standards prescribed by the land and naval forces, is found to be morally unacceptable for training and service or, under procedures and standards prescribed by the Director of Selective Service, is found to be morally unacceptable for assignment to work of national importance. The Director of Selective Service will keep the various elements of the Selective Service System advised of such procedures and standards.

622.62 *Class IV-F: Physically or mentally unfit.* In Class IV-F shall be placed any registrant who:

(1) After physical examination by the examining physician is found to have a defect set forth in the List of Defects (Form 220);

(2) After physical examination by the armed forces is found to be physically or mentally unfit for any military service; or

(3) Is a conscientious objector to both combatant and noncombatant military service found, after physical examination (final type), to be physically or mentally unfit for work of national importance under civilian direction.

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COMMENCEMENT OF CLASSIFICATION

623.1 *General principles of classification.* . . .

(c) In classifying a registrant there shall be no discrimination for or against him because of his race, creed, or color, or because of his membership or activity in any labor, political, religious, or other organization. Each registrant shall receive equal and fair justice.

623.2 *Information considered for classification.* . . . [See Footnote 182, page 100 of Petitioner's Brief in this cause, for entire text of this section.]

CLASSIFICATION BEFORE PHYSICAL EXAMINATION

623.21 *Consideration of classes not requiring physical examination.* (a) Upon undertaking to classify any registrant, it should first be determined whether he should be classified in Class I-C. If the registrant is not classified in Class I-C, it should next be determined whether he should be classified in Class IV-A.

(b) If the registrant is not classified in Class I-C or Class IV-A under paragraph (a) of this section, the local board shall next determine whether he should be classified in IV-C on the ground that he is a neutral alien who has filed DSS Form 301 or on the ground that there is no possibility of his being accepted for training and service because of his nationality or ancestry. Otherwise no consideration will be given to Class IV-C at this time.

(c) If the registrant is not classified in Class I-C or Class IV-A under paragraph (a) of this section and is not classified in Class IV-C under paragraph (b) of this section, consideration shall next be given to the following classes in the order listed, and the registrant shall be classified in the first class for which grounds are established:

Class IV-D

Class II-C

Class IV-B

Class II-B

Class III-C

Class II-A

Class III-A

PART 625—APPEARANCE BEFORE LOCAL BOARD

625.1 *Opportunity to appear in person.* (a) Every registrant, after his classification is determined by the local board (except a classification which is itself determined upon an appearance before the local board under the provisions of this part), shall have an opportunity to appear in person before the member or members of the local board designated for the purpose if he files a written request therefor within 10 days after the local board has mailed a Notice of Classification (Form 57) to him. Such 10-day period may not be extended, except when the local board finds that the registrant was unable to file such request within such period because of circumstances over which he had no control.

(b) No person other than the registrant may request an opportunity to appear in person before the local board.

(c) If the written request of the registrant to appear in person is filed with the local board within the 10-day period or if it is filed after such 10-day period and the local board finds that the registrant was unable to file such request within such period because of circumstances over which he had no control, the local board shall enter upon the Classification Record (Form 100) the date on which the request was received and the date and time fixed for the registrant to appear and shall promptly mail to the registrant a notice of the time and place fixed for such appearance.

(d) If such a written request of a registrant for an opportunity to appear in person is received after the 10-day period following the mailing of a Notice of Classification (Form 57) to the registrant, the local board, unless it specifically finds that the registrant was unable to file such a request within such period because of circumstances over which he had no control, should advise the registrant, by letter, that the time in which he is permitted to file such a request has expired, and a copy of such letter should be placed in the registrant's file. Under such circumstances,

no other record of the disposition of the registrant's request need be made.

625.2 *Appearance before local board.* (a) At the time and place fixed by the local board, the registrant may appear in person before the member or members of the local board designated for the purpose. The fact that he does appear shall be entered in the proper place on the Classification Record (Form 100). If the registrant does not speak English adequately, he may appear with a person to act as interpreter for him. No registrant may be represented before the local board by an attorney.

(b) At any such appearance, the registrant may discuss his classification, may point out the class or classes in which he thinks he should have been placed, and may direct attention to any information in his file which he believes the local board has overlooked or to which he believes it has not given sufficient weight. The registrant may present such further information as he believes will assist the local board in determining his proper classification. Such information shall be in writing or, if oral, shall be summarized in writing and, in either event, shall be placed in the registrant's file. The information furnished should be as concise as possible under the circumstances. The member or members of the local board before whom the registrant appears may impose such limitations upon the time which the registrant may have for his appearance as they deem necessary.

(c) After the registrant has appeared before the member or members of the local board designated for the purpose, the local board shall consider the new information which it receives and shall again classify the registrant in the same manner as if he had never before been classified, provided that if he has been physically examined by the examining physician, the Report of Physical Examination and Induction (Form 221) already in his file shall be used in case his physical or mental condition must be determined in order to complete his classification.

(d) After the registrant has appeared before the member or members of the local board designated for the purpose, the local board, as soon as practicable after it again classifies the registrant, shall mail notice thereof on the Notice of Classification (Form 57) to the registrant and on Classification Advice (Form 59) to the persons entitled to receive such notice or advice on an original classification under the provisions of section 623.61.

(e) Each such classification shall be followed by the same right of appeal as in the case of an original classification.

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PROCEDURE FOR TAKING APPEAL

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627.12 *Statement of person appealing.* The person appealing may attach to his notice of appeal or to the Selective Service Questionnaire (Form 40) a statement specifying the respects in which he believes the local board erred, may direct attention to any information in the registrant's file which he believes the local board has failed to consider or give sufficient weight, and may set out in full any information which was offered to the local board and which the local board failed or refused to include in the registrant's file.

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627.25 *Special provisions where appeal involves claim that registrant is a conscientious objector.* (a) If an appeal involves the question of whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the board of appeal shall first determine whether the registrant should be classified in one of the classes set forth in section 623.21, in the order set forth, and if it so determines, it shall place such registrant in such class. If the board of appeal does not determine that such registrant belongs in one of such classes, it shall transmit the entire file to the United States district attorney for the

judicial district in which the local board of the registrant is located for the purpose of securing an advisory recommendation of the Department of Justice, provided that in a case in which the local board has classified the registrant in Class IV-E or in a case in which the registrant has ~~claimed objection to combatant service only and the local board has classified him in Class I-A-O~~, the board of appeal may affirm the classification of the local board without referring the case to the Department of Justice. No registrant's file shall be forwarded to the United States district attorney by any board of appeal and any file so forwarded shall be returned, unless in the "Minutes of Other Actions" on the Selective Service Questionnaire (Form 40) the record shows and the letter of transmittal states that the board of appeal reviewed the file and determined that the registrant should not be classified in one of the classes set forth in section 623.21.

(b) The Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrant. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the board of appeal (1) that if the registrant is inducted into the land or naval forces, he shall be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall be assigned to work of national importance under civilian direction. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the board of appeal that such objections be not sustained.

(c) Upon receipt of the report of the Department of Justice, the board of appeal shall determine the classification of the registrant, and in its determination it shall give consideration to, but it shall not be bound to follow, the recommendation of the Department of Justice.

627.26 *Decision of board of appeal.* (a) The board of appeal shall classify the registrant, giving consideration to each class in the order in which the local board gives consideration thereto when it classifies a registrant. (See part 623.)

(b) Such classification of the registrant shall be final, except where an appeal to the President is taken; provided, however, that this shall not be construed as prohibiting a local board from changing the classification of a registrant in a proper case under the provisions of part 626.

628.1 *Who may appeal to the President from any determination of a board of appeal.* (a) When either the State Director of Selective Service or the Director of Selective Service deems it to be in the national interest or necessary to avoid an injustice, he may appeal to the President from any determination of a board of appeal. He may take such an appeal at any time.

(b) An appeal to the President may be taken by the Director of Selective Service (1) by mailing to the local board, through the State Director of Selective Service, a written notice of appeal or (2) by placing in the registrant's file a written notice of appeal and, through the State Director of Selective Service, advising the local board thereof.

(c) An appeal to the President may be taken by the State Director of Selective Service (1) by mailing to the local board a written notice of appeal and directing the local board to forward the registrant's file to him for transmittal to the Director of Selective Service or (2) by placing in the registrant's file a written notice of appeal and advising the local board thereof. Before he forwards the registrant's file to the Director of Selective Service, the State Director of Selective Service shall place in such file a written statement of his reasons for taking such appeal.

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628.2 *Appeal to the President.* The registrant or any person who claims to be a dependent of the registrant or any person who has filed written information as to the occupational status of the registrant, at any time within 10 days after the mailing by the local board of the Notice of Classification (Form 57), notifying the registrant that the local board classification has been affirmed or changed, may appeal to the President provided the registrant was classified by the board of appeal in either Class I-A, Class I-A-O, or Class IV-E and one or more members of the board of appeal dissented from such classification. The local board may permit any person who is entitled to appeal to the President under this section to do so, even though the 10-day period herein provided for such an appeal has elapsed, if it is satisfied that the failure of such person to appeal within such 10-day period was due to a lack of understanding of the right to appeal or to some cause beyond the control of such person. Unless the local board permits such an appeal, the right of such persons to appeal to the President shall terminate at the end of the 10-day period herein provided. [Italics added]

628.7 *Appeal to the President stays induction.* (a) When a registrant is classified by the board of appeal and one or more members of the board of appeal dissent from such classification, the registrant shall not be inducted during the period afforded him to take an appeal to the President.

GENERAL

633.1 *Order to Report for Induction (Form 150).* (a) Immediately upon determining which men are to report for induction, the local board shall prepare for each man an Order to Report for Induction (Form 150), in duplicate. The local board shall mail the original to the registrant and shall file the copy in his Cover Sheet (Form 53).

(b) The time specified for reporting shall be at least 10 days after the date the order is mailed; provided, however, in case of death or extreme emergency to a person in the registrant's immediate family, serious illness of registrant, or other extreme emergency beyond the registrant's control, the local board may, after the Order to Report for Induction (Form 150) has been issued, postpone the time when such registrant shall so report for a period not to exceed 60 days from the date of such postponement; subject, however, in cases of imperative necessity, to one further postponement for a period not to exceed 60 days; and provided also that the Director of Selective Service or any State Director of Selective Service (as to registrants within his State) may for good cause at any time prior to the issuance of an Order to Report for Induction (Form 150) order a local board to delay the issuance of such order until such time as he may deem advisable, or the Director of Selective Service or any State Director of Selective Service (as to registrants within his State) may for good cause at any time after the issuance of an Order to Report for Induction (Form 150) order a local board to postpone the induction of a registrant until such time as he may deem advisable, and registrant shall be inducted into the land or naval forces during the period of any of such delays or postponements.

(c) The date of issuance and the date of expiration of any period of delay or postponement authorized in (b) above shall be noted in the "Remarks" column of the Classification Record (Form 100).

(d) Any period of delay or postponement may be terminated before the date of expiration when the issuing authority so directs.

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633.9 *Induction.* At the induction station, the selected men found acceptable will be inducted into the land or naval forces:

. . .

642.1 *Mailing notice of delinquency.* (a) When a local board has reason to believe that a nonregistrant under its jurisdiction is a delinquent or that a registrant under its jurisdiction has become a delinquent, the board shall prepare, in quadruplicate, a Notice of Delinquency (Form 281).

(b) The local board shall mail the original of the Notice of Delinquency (Form 281) to the suspected delinquent at his last-known address. It shall mail a copy to the State Director of Selective Service. It shall post a copy in a conspicuous place for public inspection, and, whenever practicable, it shall give the information contained thereon to the press and radio and shall encourage them to give such information the widest possible publicity. It shall file the fourth copy with the date of mailing noted thereon.

(c) If the suspected delinquent is a registrant under the jurisdiction of the local board, the local board shall note in the "Remarks" column of the Classification Record (Form 100) the fact that the notice was mailed and file the fourth copy of the Notice of Delinquency (Form 281) in the registrant's Cover Sheet (Form 53).

642.2 *Investigation of delinquency.* (a) After mailing the Notice of Delinquency (Form 281), the local board shall wait 5 days before taking further action.

(b) If it does not hear from the suspected delinquent during the 5-day period, the local board shall take the following steps:

(1) Communicate with the person "who will always know" the registrant's address whose name and address appear on the Registration Card (Form 1).

(2) Communicate with the "employer" whose name and address appear on the Registration Card (Form 1).

(c) If as a result of these contacts the local board acquires any information which will enable it, with a reasonable amount of effort, to locate the suspected delinquent, it should make that effort.

(d) In trying to locate the suspected delinquent the local board may use the voluntary assistance of local or State

police officials, as well as the press and radio. In no event, however, will the local board order or participate in the arrest of a suspected delinquent.

642.3 *Disposition of delinquencies.* If a suspected delinquent has been located as a result of the local board's efforts under section 642.2 or a suspected delinquent has reported voluntarily to a local board, the local board shall carefully investigate the delinquency. If the board finds that the suspected delinquent is innocent of any wrong intent, the local board shall proceed to consider his case just as if he were never suspected of being a delinquent. The local board shall report its decision to the State Director of Selective Service and shall note its decision in its records.

642.4 *Reporting delinquents to United States district attorney.* (a) If the local board is convinced that a delinquent is not innocent of wrongful intent or if it is unable to locate a suspected delinquent (see sec. 642.2), the local board shall report him to a United States district attorney for prosecution under section 11 of the Selective Training and Service Act of 1940, as amended.

(b) In reporting a delinquent to a United States district attorney, the local board shall fill out a Report of Delinquents to United States District Attorney (Form 279), in quadruplicate. The local board shall mail the original to the United States district attorney. It shall mail a copy to the State Director of Selective Service. It shall post a copy in a conspicuous place for public inspection, and, whenever practicable, it shall give the information contained thereon to the press and radio and shall encourage them to give such information the widest possible publicity. It shall note the date of mailing on the fourth copy and shall place it in the registrant's Cover Sheet (Form 53), if the delinquent is a registrant, or in an alphabetical file of nonregistrant delinquents, if the delinquent is not a registrant.

(c) If the delinquent is a registrant, the local board shall note its action in the "Remarks" column of the Classification Record (Form 100).

642.5 *Local board action subsequent to reporting a delinquent to United States district attorney.* When a delinquent who has been reported to a United States district attorney later offers to comply with the law, the United States district attorney should be immediately notified and given a complete statement of the facts concerning such offer of compliance. The decision of whether such a delinquent should be prosecuted or his prosecution continued, in case it has already been undertaken, rests entirely with the United States district attorney. The local board, when requested to do so by the United States district attorney, may offer a suggestion as to the advisability of discontinuing the prosecution of a delinquent who has complied or is willing to comply with the law. If it is determined that the delinquency is not willful, or that substantial justice will result, the local board should encourage the delinquent to comply with his obligations under the law and, if he does so or offers to do so, should urge that any charge of delinquency against him or any prosecution of him for delinquency be dropped.

. . .

651.8 *Final-type physical examination at induction station.* At the induction station, Class IV-E registrants will be given a final-type physical examination in the same manner as that conducted for selected men. Upon completion of the final-type physical examination, Class IV-E registrants will return to their local board under direction of their leader.

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ASSIGNMENT TO WORK OF NATIONAL IMPORTANCE

652.1 *Report of conscientious objector to Director of Selective Service.* (a) When a registrant in Class IV-E has been found to be acceptable for work of national im-

portance under civilian direction, the local board shall immediately notify the Director of Selective Service on a Conscientious Objector Report (Form 48) that the registrant is so acceptable and is available for assignment to work of national importance under civilian direction.

(b) Four copies of the Conscientious Objector Report (Form 48) shall be filled out and signed by a member of the local board. Under "Remarks" the local board should add any additional information that might aid in the proper assignment of the registrant. The original and two copies of the Conscientious Objector Report (Form 48) shall be mailed to the State Director of Selective Service and the remaining copy retained in the registrant's Cover Sheet (Form 53). The State Director of Selective Service shall immediately transmit the original and one copy of the Conscientious Objector Report (Form 48) to the Director of Selective Service and shall file the remaining copy.

(c) Until such time as his defects have been corrected, no Conscientious Objector Report (Form 48) shall be filled out or used for a registrant who, according to the report of the examining physician, will be qualified for general service after satisfactory correction of specified remediable defects.

652.2 *Assignment by Director of Selective Service.*

(a) The Director of Selective Service, upon receipt of (1) the Conscientious Objector Report (Form 48) for a registrant or (2) information from the land or naval forces that a registrant who has been inducted into the land or naval forces will be discharged because of conscientious objections which make him unadaptable to military service, shall assign the registrant to a camp. Such assignment will be made on an Assignment to Work of National Importance (Form 49), which shall be made out in triplicate. The original and one copy will be mailed to the State Director of Selective Service, who shall forward the original to the local board designated therein and file the copy. If the Assignment to Work of National Importance (Form 49) is sent to a local

board other than the registrant's local board, the registrant's local board will be notified of such action so that appropriate notations may be made in its records.

(b) Persons paroled for assignment to work of national importance under civilian direction or other special service under part 643 shall be assigned to such work by the Director of Selective Service in such manner as he may determine.

DELIVERY OF PERSONS WHO HAVE BEEN ASSIGNED TO WORK OF NATIONAL IMPORTANCE UNDER CIVILIAN DIRECTION

652.11 *Preparation and distribution of Order to Report; delinquency of IV-E registrants.* (a) Upon receipt of an Assignment to Work of National Importance (Form 49) for a registrant, the local board shall prepare six copies of an Order to Report for Work of National Importance (Form 50). The local board shall then proceed as follows:

(1) In the case of a registrant classified in Class IV-E: Mail the original of the Order to Report for Work of National Importance (Form 50) to the registrant at least 10 days before the date set for him to report. At the time the registrant leaves the local board for the camp, mail the remaining five copies of the Order to Report for Work of National Importance (Form 50), together with the Armed Forces' Original, the Surgeon General's Copy, and the National Headquarters' Copy of the registrant's Report of Physical Examination and Induction (Form 221), to the camp directors, and retain the Local Board's Copy of the registrant's Report of Physical Examination and Induction (Form 221) in the registrant's Cover Sheet (Form 53).

(2) In the case of a registrant discharged from the land or naval forces because of conscientious objections which make him unadaptable for military service: Mail or deliver to the registrant before the time set for him to report, the original of the Order to Report for Work of National Importance (Form 50). At the time the registrant leaves the local board for the camp, mail the remaining five copies of

the Order to Report for Work of National Importance (Form 50), together with a letter explaining the circumstances under which the registrant was ordered to report for work of national importance, to the camp director at such camp. No other records shall be forwarded to the camp director with such registrant.

When an Order to Report for Work of National Importance (Form 50) is mailed or delivered to a registrant as hereinbefore provided, it shall be his duty to comply therewith, to report to the camp at the time and place designated therein, and to thereafter perform work of national importance under civilian direction for the period, at the place, and in the manner provided by law.

(b) The issuance of an Order to Report for Work of National Importance (Form 50) may be delayed or delivery under such an order may be postponed to the extent and in the manner provided in section 633.1.

(c) If for any reason an Order to Report for Work of National Importance (Form 50) is not sent to a registrant for whom an Assignment to Work of National Importance (Form 49) has been received from the Director of Selective Service, or in the event a registrant who has been sent an Order to Report for Work of National Importance (Form 50) does not report to the local board pursuant to such order, the local board shall report such fact to the Director of Selective Service through the State Director of Selective Service. If any such registrant becomes delinquent by reason of his failure to perform any of his obligations under the selective service law, his case should be handled under the provisions of part 642 in the same manner as in the case of any other delinquent registrant.

652.12 *Transportation to camp.* (a) When a registrant in Class IV-E reports to the local board for transportation to a camp for work of national importance under civilian direction, the local board shall prepare the necessary Government Requests for Transportation (Standard Form

No. 1030) and Government Request for Meals and Lodgings for Civilian Registrants (Form 256) for use by the registrant between the local board and the camp. Except as otherwise provided herein, the local board will follow the same procedure in delivering the registrant to work of national importance under civilian direction as is followed in the case of a registrant delivered for induction into the land or naval forces.

(b) The delivery of a person paroled to work of national importance under civilian direction will be accomplished by the proper prison officials.

652.13 *Jurisdiction of local board while registrant is engaged in work of national importance.* A registrant in Class IV-E who has reported for work of national importance pursuant to this part shall be retained in Class IV-E by the local board. Such registrant after he has left the local board in accordance with section 652.12 for work of national importance under civilian direction is under the jurisdiction of the camp to which he is assigned. The local board shall take no further steps with regard to such registrant without instructions from the Director of Selective Service, but should report any information to the Director of Selective Service which might affect the registrant's status.

652.14 *Period of service.* (a) A registrant in Class IV-E who has been assigned to a camp shall be engaged in work of national importance under civilian direction during the existence of any war in which the United States is engaged and during the 6 months immediately following the termination of any such war, unless sooner released under the same conditions as pertain in the armed forces.

(b) A person assigned to a camp on parole pursuant to part 643 shall be engaged in work of national importance under civilian direction for the length of the term of his sentence less deductions for good conducts as provided in part 643.

PART 691—RULES FOR CAMPS OPERATED BY THE NATIONAL SERVICE BOARD FOR RELIGIOUS OBJECTORS

691.17 Discipline. . . .

(d) If, after reporting to the camp, an assignee is absent without leave for a continuous period of 10 days, he will be deemed a deserter. On the 11th day the Director of Selective Service will be notified through regular channels and may take the necessary steps to report the assignee to the proper United States attorney as a violator of the Selective Training and Service Act of 1940, as amended.

(e) Refusal to work or perform other assigned duties, inciting others to refuse to work or perform assigned duties, or failure to abide by the rules and regulations promulgated by the camp director, will constitute a violation of these rules and regulations.

A full and immediate report of such violation of these rules and regulations will be made to the Director of Selective Service through regular channels. If the reported conduct indicates that the assignee may have been improperly classified, the Director of Selective Service may take the necessary steps to submit the information to the assignee's local board with a request that the assignee's case be reopened and his classification considered anew under the Selective Service Regulations. The Director of Selective Service may also report the assignee to the proper United States attorney as a violator of the Selective Training and Service Act of 1940, as amended.

NOTES—PART 622

Class IV-D.

22. *Catholic Lay Brothers.* Lay Brothers of the duly established and recognized orders of the Holy Roman Catholic Church are not "duly ordained ministers of reli-

gion" but should be classified in Class IV-D as "regular ministers of religion."

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24. *Jehovah's Witnesses.* The unincorporated body of persons known as Jehovah's Witnesses are considered to constitute a recognized religious sect. Members of Jehovah's Witnesses constituting the Bethel family and the office and factory workers at 117 Adams Street, Brooklyn, New York, whose names are recorded in the executive offices of the Watchtower Bible and Tract Society, Inc. and who devote their full time and effort to the manufacture and production of books, pamphlets, and supplies for the religious benefit of Jehovah's Witnesses, may be classified in Class IV-D, provided their names appear on the certified official list of such persons transmitted to State Directors of Selective Service by National Headquarters of the Selective Service System. Members of Jehovah's Witnesses who devote all or a substantial part of their time to the work of teaching the tenets of their religion and in the converting of others to their belief, and are individually recorded as "pioneers" by the Watchtower Bible and Tract Society, Inc. at its executive offices in Brooklyn, New York, may also be classified in Class IV-D, provided that their names appear on the certified official list of such persons transmitted to State Directors of Selective Service by National Headquarters of the Selective Service System. Whether a IV-D-classification may be given to members of Jehovah's Witnesses who occupy the capacities and are known as regional servants, zone servants, company servants, sound servants, advertising servants, back-call servants, and by other similar descriptive titles, must be determined in each individual case by the local board based upon whether such persons devote their lives to the furtherance of the beliefs of Jehovah's Witnesses, whether they perform functions which are normally performed by regular or duly ordained ministers of other religions, and whether they are regarded by other Jehovah's Witnesses in the same manner as other duly

ordained ministers of other religions are ordinarily regarded. In the case of Jehovah's Witnesses as in the case of all other registrants who claim exemption as duly ordained ministers of religion, the local board shall place in the registrant's file a record of all facts entering into its determination for the reason that it is legally necessary that the record show the basis of the local board's decision.

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VOL. III OPINION NO. 14
NATIONAL HEADQUARTERS
SELECTIVE SERVICE SYSTEM

SUBJECT: Ministerial status of Jehovah's Witnesses
Facts:

Jehovah's Witnesses claim exemption from training and service and classification in Class IV-D as duly ordained ministers of religion under Section 5 (d), Selective Training and Service Act of 1940 and Paragraph 360, Selective Service Regulations which read as follows:
 Section 5 (d):

"Regular or duly ordained ministers of religion, and students who are preparing for the ministry in theological or divinity schools recognized as such for more than one year prior to the date of enactment of this Act, shall be exempt from training and service (but not from registration) under this Act."

Paragraph 360:

"Class IV-D: Minister of religion or divinity student.—a. In Class IV-D shall be placed any registrant who is a regular or duly ordained minister of religion or who is a student preparing for the ministry in theological or divinity school recognized as such for more than one year prior to the date of enactment of the Selective Training and Service Act (September 16, 1940).

b. A 'regular minister of religion' is a man who customarily preaches and teaches the principles of religion of a recognized church, religious sect, or religious organization

of which he is a member, without having been formally ordained as a minister of religion; and who is recognized by such church, sect, or organization as a minister.

c. A 'duly ordained minister of religion' is a man who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect, or religious organization, to teach and preach its doctrines and to administer its rites and ceremonies in public worship; and who customarily performs those duties."

Question.—May Jehovah's Witnesses be placed in Class IV-D as regular or duly ordained ministers of religion exempt from training and service?

Answer:

1. The Watchtower Bible and Tract Society, Inc., is incorporated under the laws of the State of New York for charitable, religious, and scientific purposes. The unincorporated body of persons known as Jehovah's Witnesses hold in common certain religious tenets and beliefs and recognize as their terrestrial governing organization the Watchtower Bible and Tract Society, Inc. By their adherence to the organization of this religious corporation the unincorporated body of Jehovah's Witnesses are considered to constitute a recognized religious sect.

2. The unusual character of organization of Jehovah's Witnesses renders comparisons with recognized churches and religious organizations difficult. Certain members of Jehovah's Witnesses, by reason of the time which they devote, the dedication of their lives which they have made, the attitude of other Jehovah's Witnesses toward them, and the record kept of them and their work, places them in a position where they may be recognized as having a standing in relation to the organization and the other members of Jehovah's Witnesses, similar to that occupied by regular or duly ordained ministers of other religions.

3. There are those members of Jehovah's Witnesses who devote their full time and effort to the manufacture and production of books, pamphlets, and supplies for the reli-

gious benefit of Jehovah's Witnesses, the purpose of which is to present the beliefs of Jehovah's Witnesses and to convert others. For their religious services the members of this group receive their subsistence and lodging and in addition a very modest monthly allowance. This group of individuals consists of the office and factory workers at 117 Adams Street, Brooklyn, New York, and of the Bethel family, which includes workers in the executive offices at 124 Columbia Heights, Brooklyn, New York, and at the Farms. The names of those who form this group are recorded in the executive offices of the Watchtower Bible and Tract Society, Inc. Members of this group who devote their entire time and effort to the publications and supplies of the Society have a standing in relationship to that organization and the other members of Jehovah's Witnesses which brings them within the purview of Section 5 (d) of the Selective Training and Service Act of 1940 and they may be classified in Class IV-D (providing their names appear on the certified official list of such persons transmitted to State Directors of Selective Service by National Headquarters of the Selective Service System).

4. The members of Jehovah's Witnesses who devote their time to the work of teaching the tenets of their religion and in the converting of others to their belief, and who enjoy the esteem of other Jehovah's Witnesses, and are each individually recorded as "pioneers" by the Watchtower Bible and Tract Society, Inc., at its executive offices in Brooklyn, New York, are in a position where they may be recognized as having a standing, in relationship to the organization and to the other members of Jehovah's Witnesses, similar to that occupied by regular or duly ordained ministers in other religions, and such persons who spend all or a substantial part of their time in the work of Jehovah's Witnesses, as set forth above, come within the purview of Section 5 (d) of the Selective Training and Service Act of 1940 and may be classified in Class IV-D, provided that the names of such persons appear on the certified official

list of such persons transmitted to State Directors of Selective Service by National Headquarters of the Selective Service System.

5. The members of Jehovah's Witnesses who occupy the capacities are known by the various names of regional servants, zone servants, company servants, sound servants, advertising servants, back-call servants, and by other similar descriptive titles, devote their time and efforts in varying degrees to the dissemination of the tenets and beliefs of Jehovah's Witnesses. The deference paid to these individuals by other members of Jehovah's Witnesses also varies in a great degree. It is impossible to make a general determination with respect to these persons as to their relationship to Jehovah's Witnesses. Whether or not they stand in the same relationship as regular or duly ordained ministers in other religions must be determined in each individual case by the local board, based upon whether or not they devote their lives in the furtherance of the beliefs of Jehovah's Witnesses, whether or not they perform functions which are normally performed by regular or duly ordained ministers of other religions, and finally, whether or not they are regarded by other Jehovah's Witnesses in the same manner in which regular or duly ordained ministers of other religions are ordinarily regarded.

6. In the case of Jehovah's Witnesses as in the case of all other registrants who claim exemption as regular or duly ordained ministers, the local board shall place in the registrant's file a record of all facts entering into its determination for the reason that it is legally necessary that the record show the basis of the local board's decision.

LEWIS B. HERSHEY

Deputy Director

Legal

June 12, 1941

File Reference III—Ministers
Sec. 5 (d); Par. 360, S.S.R.

VOL. III OPINION NO. 14 (AMENDED)
NATIONAL HEADQUARTERS
SELECTIVE SERVICE SYSTEM

SUBJECT: Ministerial Status of Jehovah's Witnesses

FACTS:

Jehovah's Witnesses claim exemption from training and service and classification in Class IV-D as duly ordained ministers of religion under section 5 (d), Selective Training and Service Act of 1940, as amended, and section 622.44, Selective Service Regulations, Second Edition, which read as follows:

Section 5 (d):

"Regular or duly ordained ministers of religion, and students who are preparing for the ministry in theological or divinity schools recognized as such for more than one year prior to the date of enactment of this Act, shall be exempt from training and service (but not from registration) under this Act."

Section 622.44:

"Class IV-D: Minister of religion or divinity student.

(a) In Class IV-D shall be placed any registrant who is a regular or duly ordained minister of religion or who is a student preparing for the ministry in a theological or divinity school which has been recognized as such for more than 1 year prior to the date of enactment of the Selective Training and Service Act (September 16, 1940).

"(b) A 'regular minister of religion' is a man who customarily preaches and teaches the principles of religion of a recognized church, religious sect, or religious organization of which he is a member, without having been formally ordained as a minister of religion; and who is recognized by such church, sect, or organization as a minister.

"(c) A 'duly ordained minister of religion' is a man who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect, or religious organization, to teach and preach its doctrines and

to administer its rites and ceremonies in public worship; and who customarily performs those duties."

Question.—May Jehovah's Witnesses be placed in Class IV-D as regular or duly ordained ministers of religion exempt from training and service?

Answer:

1. The Watchtower Bible and Tract Society, Inc., is incorporated under the laws of the State of New York for charitable, religious, and scientific purposes. The unincorporated body of persons known as Jehovah's Witnesses hold in common certain religious tenets and beliefs and recognize as their terrestrial governing organization the Watchtower Bible and Tract Society, Inc. By their adherence to the organization of this religious corporation, the unincorporated body of Jehovah's Witnesses are considered to constitute a recognized religious sect.

2. The unusual character of organization of Jehovah's Witnesses renders comparisons with recognized churches and religious organizations difficult. Certain members of Jehovah's Witnesses, by reason of the time which they devote, the dedication of their lives which they have made, the attitude of other Jehovah's Witnesses toward them, and the record kept of them and their work, are in a position where they may be recognized as having a standing in relation to the organization and the other members of Jehovah's Witnesses similar to that occupied by regular or duly ordained ministers of other religions.

3. Members of the Bethel Family are those members of Jehovah's Witnesses who devote their full time and effort to the manufacture and production of books, pamphlets, and supplies for the religious benefit of Jehovah's Witnesses, the purpose of which is to present the beliefs of Jehovah's Witnesses and to convert others. For their religious services, the members of this group receive their subsistence and lodging and in addition a very modest monthly allowance. This group of individuals consist of the

office and factory workers at 117 Adams Street, Brooklyn, New York, and workers in the executive offices at 124 Columbia Heights, Brooklyn, New York, and at the Farms. Pioneers of Jehovah's Witnesses are those members of Jehovah's Witnesses who devote all or substantially all of their time to the work of teaching the tenets of their religion and in the converting of others to their belief. A certified official list of members of the Bethel Family and pioneers is being transmitted to the State Directors of Selective Service by National Headquarters of the Selective Service System simultaneously with the release of this amended Opinion. The members of the Bethel Family and pioneers whose names appear upon such certified official list come within the purview of section 5 (d) of the Selective Training and Service Act of 1940, as amended, and they may be classified in Class IV-D. The status of members of the Bethel Family and pioneers whose names do not appear upon such certified official list shall be determined under the provisions of paragraph 5 of this Opinion.

4. The original paragraph 4 has been consolidated with paragraph 3 of this amended Opinion.

5. The members of Jehovah's Witnesses, known by the various names of members of the Bethel Family, pioneers, regional servants, zone servants, company servants, sound servants, advertising servants, and back-call servants, devote their time and efforts in varying degrees to the dissemination of the tenets and beliefs of Jehovah's Witnesses. The deference paid to these individuals by other members of Jehovah's Witnesses also varies in a great degree. It is impossible to make a general determination with respect to these persons as to their relationship to Jehovah's Witnesses. Whether or not they stand in the same relationship as regular or duly ordained ministers in other religions must be determined in each individual case by the local board, based upon whether or not they devote their lives in the furtherance of the beliefs of Jehovah's Witnesses, whether or not they perform functions

which are normally performed by regular or duly ordained ministers of other religions, and, finally, whether or not they are regarded by other Jehovah's Witnesses in the same manner in which regular or duly ordained ministers of other religions are ordinarily regarded.

6. In the case of Jehovah's Witnesses, as in the case of all other registrants who claim exemption as regular or duly ordained ministers, the local board shall place in the registrant's file a record of all facts entering into its determination for the reason that it is legally necessary that the record show the basis of the local board's decision.

LEWIS B. HERSHEY
Director

LBH/spd

Legal

November 2, 1942

Secs. 5(d), 622.44

DISTRIBUTION "A,B,C,D"

OPINION NO. 2
NATIONAL HEADQUARTERS
SELECTIVE SERVICE SYSTEM

SUBJECT: Classification—Exemption of Catholic Lay Brothers on Account of Being Regular Ministers of Religion

Facts:

(1) Section 5 (d) of the Selective Training and Service Act reads as follows:

"(d) Regular or duly ordained ministers of religion, and students who are preparing for the ministry in theological or divinity schools recognized as such for more than one year prior to the date of enactment of this Act, shall be exempt from training and service (but not from registration) under this Act."

(2) Paragraph 360 of the Selective Service Regulations, which was promulgated in virtue of the foregoing provision of the Act, reads as follows:

"360. Class IV-D: Minister of religion or divinity student.—a. In Class IV-D shall be placed any registrant who is a regular or duly ordained minister of religion or who is a student preparing for the ministry in a theological or divinity school recognized as such for more than one year prior to the date of enactment of the Selective Training and Service Act (September 16, 1940).

"b. A 'regular minister of religion' is a man who customarily preaches and teaches the principles of religion of a recognized church, religious sect, or religious organization of which he is a member, without having been formally ordained as a minister of religion; and who is recognized by such church, sect, or organization as a minister.

"c. A 'duly ordained minister of religion' is a man who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect, or religious organization, to teach and preach its doctrines and to administer its rites and ceremonies in public worship; and customarily performs those duties."

(3) Archbishop Edward Mooney of Detroit, under date of December 14, 1940, as chairman of the Administrative Board of the National Catholic Welfare Conference, has officially certified to the Director of Selective Service the following facts in regard to the religious status of Catholic Lay Brothers:

"I beg to certify that according to the laws of the Church, the term 'Brother' or 'Lay Brother' signifies a regular minister of religion.

"'Lay Brothers' in all the canonically approved societies, orders and congregations are religious ministers in the fullest sense of that term as defined in the Code of Canon Law (Canon 488, 70). They are deliberately received into an ecclesiastically approved religious order or society so that, in fulfillment of their dedication by the profession of the vows or solemn promises of religion, they, as real ministers of religion, may cooperate in the sacred ministry

of the priests and the salvation of souls, by the performance of the special tasks assigned to them in schools, hospitals, religious institutes, houses of study or elsewhere.

"The 'Lay Brothers', so-called, are not only bound to the obligations of the clerical state (Cfr. Canons 592 and 679) but they also enjoy the very same privileges as clerics (Cfr. Canons 614 and 680)."

Question.—Are the Lay Brothers of the various Catholic religious orders entitled to be placed in Class IV-D?

Answer.—While it appears that all of these men have made profession of the vows required of them by their respective religious Congregations, such as poverty, chastity, obedience, et cetera, and are said to devote all of their time to their Congregations without pay; nevertheless, they are not "duly ordained ministers of religion" as that term has been defined in Paragraph 360c. Rather the claim is made in their behalf that they are "regular ministers of religion," within the meaning and limitations of Paragraph 360b.

From a legal standpoint, when construing Section 5 (d) of the Act and Paragraph 360b of the Regulations, if there is any ambiguity or doubt (and there seems to be some) in the matter, the intention of Congress, if it is apparent, may be considered in arriving at a solution of the question.

The status of the Lay Brothers was discussed in the meetings of the Committees on Military Affairs of both Houses of Congress when the Selective Training and Service Act was being heard and considered by such committees. And in the report of Chairman May of the House Committee on Military Affairs (on page 5 thereof) appears the following paragraph:

"Under section 5 (d), regular or duly ordained ministers of religion, and students who are preparing for the ministry in theological or divinity schools, recognized as such for more than 1 year prior to the date of enactment of the bill, are to be exempt from training and service (but not

from registration) under the bill. *This exemption would also include all Brothers who have taken solemn vows to dedicate their lives to the service of God.*"

Moreover, when the Act was being debated in the Senate, Senator Lodge asked Senator Guffey (who was sponsoring the particular matter) if the language was broad enough to "cover religious brothers," and the answer was "yes." See page 16165 of the Congressional Record.

Therefore, unquestionably, it is clear that The Congress intended that the Lay Brothers were included in the purview of the Statutory exemption of regular ministers of religion from training and service.

Of course, in the last analysis, it is the function of the local selective service board to receive the facts in each case and make the proper classification decision; however, when the facts are established to the satisfaction of the local board that a registrant is a Lay Brother member of one of the duly established and recognized religious Congregations or Orders of the Holy Roman Catholic Church, we are of the opinion that the board should place such a person in Class IV-D, under authority of Paragraph 360b.

Nothing said in this opinion shall preclude such a Lay Brother from waiving and not insisting upon his status as a regular minister of religion and the exemption granted on account thereof under the Selective Service Law.

EDWARD S. SHATTUCK

Major, United States Army

Chief, Legal Division

January 25, 1941

File Reference III—Ministers

Sec. 5 (d); Par. 360b

COPY OF LETTER FROM CONGRESSMAN MARTIN J. KENNEDY APPEARING IN PRINTED "HEARINGS BEFORE THE COMMITTEE ON MILITARY AFFAIRS, HOUSE OF REPRESENTATIVES, SEVENTY-SIXTH CONGRESS, THIRD SESSION, on H. R. 10132;

Pages 628-630

HOUSE OF REPRESENTATIVES,
Washington, D.C., August 7, 1940.

MILITARY AFFAIRS COMMITTEE,

House of Representatives.

GENTLEMEN: To me it seems imperative that action be taken by your committee to insure that the Wadsworth bill be so modified as to make due provision for the religious life of the American people. As you know the sole provision of the bill in this matter is the President's right to defer the service rendered by ministers of religion actually engaged in ministerial duties. No provision is made for those who are preparing for the ministry: seminarians. Nor is any provision made for those indispensable members of a religious community, whose duties it is to attend to the domestic work of the religious house—the coadjutor brothers. These men make it possible for priests to attend to their proper work.

To me it seems clear that the good of the American people requires that all these classes—clergymen, seminarians, and Brothers—be exempted from service under the bill.

Many reasons why this statement is true must occur to your mind; let me mention those which seem of weight to me. I shall not offer arguments which might appeal to my coreligionists, but such as must weigh with every thoughtful American.

It is evident to intelligent observers that religion is the backbone of all moral conduct; religion supports authority, teaching respect for law and order. Principles derived from religious moral teaching make the average man an honest man, a law-abiding citizen. Teaching, for example,

that God forbids murder under threat of eternal punishment, religious instructors have proposed a motive for avoiding this crime far in excess of any which the state can assign or carry out; and so also of all other crimes. It is, therefore, good public policy to provide for the continued and flourishing existence of religion; I do not, of course, suggest any link with any particular form of religion but an even-handed dealing with all religious bodies.

Religion is one of the needs and demands of the American people. In fact, the bill under discussion may be said to recognize this need, since it makes some effort to provide for religious ministers. The precise point is that the provision of this bill in this respect is not adequate.

Granted that religious ministers are to receive some consideration under this bill, consistency and thoroughness require that this consideration (1) amount to total exemption from training and service, and (2) be extended not only to ministers already ordained, but also to the two groups mentioned above, seminarians and Brothers.

Let me take the three points that here suggest themselves in order:

1. Total exemption of ordained clergymen.
2. Total exemption of seminarians,
3. Total exemption of Brothers.

1. Total exemption of ordained clergymen. The American people enjoy the right to exercise freely their right to worship. To do this adequately, each religious group requires and desires that it be possessed of a group of trained religious educators and leaders known as the clergy. The principle, therefore, that each man should serve where he will do the most good and best further his country's interests in time of war requires that in time of war the clergy remain clergy. That is their specialty. There they are most efficient. There they are most needed. It is a well-known adage that "without hope the people perish." And truly this is especially manifest in time of war when

the buoyant and hopeful solution of life given by religion alone suffices to lift up fainting spirits.

2. Total exemption of seminarians. The public need for a properly trained clergy already described is a permanent thing, lasting as long as there endures the ineradicable tendency in man toward higher things. To satisfy this permanent need, a continuous stream of trained religious leaders must be entering upon their work. This cannot be if we do not permit our seminaries to continue their normal functioning. For where are we to find our future ministers of religion if not in seminaries? It must be clear that if you take away the seminaries of today you take away the priest, minister, or rabbi of tomorrow. And whether the morrow bring peace or war, we can ill afford to lack spiritual leaders, be they chaplains to encourage and befriend our soldiers or be they pastors who instruct and serve our people.

But it may be objected that there is no intention under the bill of destroying the seminarian class, that all that is required is a temporary interruption of the course pursued by the seminarian. To this objection, let me answer, first, that such an interruption of a full year in the midst of a course of study which of its nature is continuous and closely linked would be an immense set-back in the progress of the seminarian toward his goal. Secondly, and this response is more basic, the objection misses the whole point at issue. That point is precisely this: The seminarian is destined to serve the people as a clergyman, whether in peace or in war. Hence any training of him for other work is a needless waste of time and money.

The measure to be taken, therefore, is one recognizing the principle that an adequate clergy group is a really fundamental necessity in time of war and hence, parallelly, an adequate seminarian group is a real necessity in time of preparation. No bona fide seminarian should be shunted off the course he has entered upon and drafted into some

other field of public service, thus deserting the line for which he is best adapted.

This leads us to another seeming objection to my proposal, which, in fact however, has no weight. That is the objection that spurious seminaries and seminarians will suddenly appear all over the country in order that conscription be evaded. Even if some less spirited youths might be tempted to try this ruse, is it not clear that a little careful examination of each institution will quickly reveal which are genuine seminaries containing sincere seminarians and which are so-called seminarians containing opportunists? For, surely, it is a matter of public record in each locality which seminaries have been in existence for a term of years before the war scare sufficient to prove that avoidance of military service had nought to do with their existence. Again, the records of these seminaries will reveal the average number of entrees each year. Only if the number this year notably exceed that of recent years may suspicion be cast on the genuine good intentions of those entering this year.

3. Total exemption of Brothers. We may distinguish two types of Brothers; viz: those who directly serve the people at large for example by teaching, and those who do so indirectly, namely by directly serving priests or other religious who in turn serve the people directly. I contend that both classes should be totally exempted from military service and training. This exemption is due to the first class—those who serve the people at large directly—because their functions are necessary both in peace and war. Let us consider the offices performed by the second group a little more closely. These men do the manual work necessary in religious communities and institutions. Their ministrations, given freely, are absolutely necessary, if the priests are to be free to attend to their special work. Hence, the arguments which prove the need of clergy prove likewise the need of these relatively few, but very important mem-

bers of religious communities. They also ought, therefore, to be exempted.

I hope my suggestions will receive the favorable consideration of the committee.

I would be pleased to have this letter included in the hearings.

Respectfully submitted.

MARTIN J. KENNEDY